

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

LINDA ROLLINS

*** CIVIL ACTION NO. 08-0387**

VERSUS

*** JUDGE JAMES**

ST. JUDE MEDICAL, ET AL.

*** MAGISTRATE JUDGE HAYES**

ORDER

Before the court is a motion to dismiss, (Doc. #16), brought by defendants St. Jude Medical, Inc.; Tyco International, Inc.; Kensey-Nash Corporation; Wyeth; and Tyco Healthcare Group L.P. Having reviewed the plaintiff's state court petition, (Doc. #1-1), and the parties' briefs, the undersigned has concluded that the plaintiff should be granted leave to amend her complaint prior to the disposition of the pending motion.

The undersigned notes that at least some of the plaintiff's present claims are likely preempted by the Medical Device Amendments of 1976 ("MDA"), 21 U.S.C. § 360c et seq. *See Riegel v. Medtronic, Inc.*, 128 S. Ct. 999, 1011 (2008) ("State requirements are pre-empted under the MDA only to the extent that they are 'different from, or in addition to' the requirements imposed by federal law . . . Thus, § 360k does not prevent a State from providing a damages remedy for claims premised on a violation of FDA regulations."). In addition, the undersigned notes that portions of the petition appear to be vague, especially relating to the manner and type of the injuries the plaintiff has suffered. However, because these deficiencies may be cured by amendment, the plaintiffs should be granted leave to amend. *See Jackson v. Proconier*, 789 F.2d 307, 310 (5th Cir. 1986) ("A complaint sought to be dismissed under Rule 12(b)(6) may generally be amended to cure its deficiencies.").

IT IS THEREFORE ORDERED THAT the plaintiffs are granted leave to file an

amended complaint within 30 (thirty) days of this order.

IT IS FURTHER ORDERED THAT once said pleading is filed, the parties may seek leave to file supplemental memoranda on the pending motion, if necessary.

THUS DONE AND SIGNED at Monroe, Louisiana, this 15th day of May, 2008.


KAREN L. HAYES
U. S. MAGISTRATE JUDGE